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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

INDUSTRIAL FURNACES BURNING HAZARDOUS WASTES AND THE RESIDUALS GENERATED (LOUISIANA REG)

APR 15 1987

Mr. Richard C. Fortuna
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Hazardous Waste Treatment Council
1919 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006

Dear Mr. Fortuna:

In your letters of January 6, and March 27, 1987, you raised a number of issues regarding the Marine Shale facility. Region VI has already responded to some of your concerns. We will respond to some of the other questions raised in your letters. However, other questions relate to current enforcement deliberations and, therefore, cannot be addressed without jepardizing potential actions.

First, with regard to past enforcement actions, the Louisiana Department of Environmental Quality (LDEQ) has issued a number of enforcement actions against marine Shale, the most recent of which was issued July 29, 1986. I believe Region VI has already furnished you a copy of the order entered in that proceeding.

_ Question 3 - Has Louisiana been delegated authority to administer the definition of solid waste regulations or the Phase I burning regulations?

As you know, under Section 3006 of the Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA) may authorize qualified States to administer and enforce their State hazardous waste management program

in lieu of the Agency operating the Federal program in those States. Final authorization was granted to the State of Louisiana on February 7, 1985 [50 Fed. Reg. 3348 (January

24, 1985)]. However, the rules relating to the definition of solid waste that were promulgated under 50 Fed. Reg. 614 (January 4, 1985), were not part of the authorized program. Therefore, these rules do not apply until the State revises its program to include controls for hazardous wastes that are equivalent to, or more stringent than, EPA's regulations (i.e., regulations concerning the new definition of solid waste do not become effective in an authorized State, until that State amends its regulations and EPA authorizes the amended State program).

In contrast, the Hazardous and Solid Waste Amendments of 1984 (HSWA), which amended RCRA, provide new requirements and prohibitions in authorized States, such as Louisiana, until the State is delegated authority to do so. The hazardous waste fuel regulations [50 Fed. Reg. 49164 (November 29, 1985)] were promulgated pursuant to HSWA. Therefore, these rules are effective and Federally-enforceable in Louisiana, although they have not yet been adopted by Louisiana and authorized by EPA.

It should be noted that if the Marine Shale facility is engaged in sham recycling and is in reality operating to destroy hazardous wastes by controlled thermal combustion, it is incinerating the wastes and is subject to the Subpart O standards for incinerators. The issue of sham recycling is a question of fact, turning on the contribution of the materials burned to the output of the device. the facility's operating practices (for instance, degree to which wastes are scrutinized for beneficial properties, revenues derived from burning wastes versus processing raw materials) are also relevant. The Agency is investigating these questions. We also are intending to propose in the near future regulations of air emissions from boilers and industrial furnaces that legitimately recycle hazardous waste.

_ Question 4 - How is the State (or Region VI) implementing the overaccumulation restrictions of 40 CFR Part 261.2 (c)(4) throughout the State, not merely at MSP?

As already indicated, the new definition of solid waste regulations are not a part of Louisiana's authorized hazardous waste program. Therefore, the overaccumulation provision which is part of the new definition of solid waste is not being implemented in Louisiana. Nevertheless, the speculative accumulation provision would be irrelevant at MSP. In particular, the facility already is deemed to be accepting hazardous wastes, and requires a storage facility.

_ Question 5 - The use constituting disposal regulations under part 261.2(c)(1)(A) and (13) specifically contain a requirement that wastes place don the ground must be bound or chemically fixed in a manner that prevents migration. What is the policy regarding the level of chemical reaction that must occur to satisfy this requirement? Are residues of aggregate kiln furnaces generally considered to satisfy those requirements?

EPA regulations, including 40 CFR 261.2(c)(1), which you cited, do not require that wastes be bound or chemically fixed in a manner that prevents migration before they can be placed on the ground. Rather, Sections 266.20(a)(2)(b) of the regulations state that recyclable materials that have undergone a chemical reaction, so as to become inseparable by physical means, are exempted from the regulations under Subtitle C of RCRA. Therefore, those wastes that are not chemically reacted can still be applied to the land for beneficial use if the hazardous waste disposer complies with the appropriate management standards.

As to the level of chemical reaction that must occur before a waste that is applied to the land is exempt from regulation, the Agency has not developed specific guidance.

We believe, however, that the preamble discussion provides general guidance to the regulated community in this area (50 CFR 6463, January 4, 1985). Specifically, we believe materials would fall under this exemption if the hazardous waste was chemically transformed. In addition, the hazardous waste would have to be an effective substitute for some commercial material. In the preamble, we also included several examples of materials that would or would not fit the chemical reaction standard.

It is important not to confuse this standard with the "no migration" standard under the Land Disposal Restrictions requirements. According to _266.20(a)(2)(b) standard, it a chemical reaction occurs and the hazardous waste is an effective substitute for a commercial material, the material would be exempt from regulation whether or not any migration has occurred.

Regarding the residues of aggregate kiln furnace, as a general matter, if the hazardous waste has undergone a chemical reaction in the aggregate kiln and if the hazardous waste is an effective substitute in producing aggregate, then residues would be exempt from regulation. The particular facts at MSP would have to be evaluated to determine its regulatory status.

_ Question 11 - Is it Agency policy to extend the scope of the RCRA mining exclusion to industrial furnaces and their residues and thereby exempt them from the "derived-from-rule."

The mining waste exclusion applies to the residuals, not to the industrial furnace itself. The mining waste exclusion applies to devices that process ores or minerals. The relevant inquiry thus is first to the nature of the device, namely is it being used to process ores or minerals, and second, to the types of materials burned in the device, i.e., are they largely ores and minerals or some other type of materials?

Thus, if an industrial furnace is operating to destroy wastes, it is not processing ores or minerals, and its residues would not be excluded. The sham burning policy you mention is a possible example (assuming the device is not also processing ores and minerals).

If an industrial furnace burns hazardous waste for the purpose of destruction, the furnace is subject to the incinerator standards, as already indicated. The sham burning policy you reference indicates that waste with an as-generated heating value of less than 5,000 BTU/lb may sometimes not be considered a bona fide fuel. When such wastes, whether

mixed with higher heating value wastes or fuels, are burned in an industrial furnace (or boiler), such burning is considered incineration.

Even if the furnace is being used to recycle wastes, it might not be considered to be processing ores or minerals it the majority of the feed to the device was a non-ore or mineral. The Agency has always maintained, for example, that secondary smelting furnaces are not covered by the mining waste exclusion even though some of these furnaces burn small percentages of ores and minerals.

We should note that the Agency plans to solicit comment on these issues in its upcoming rules on burning in boilers and furnaces. Also, we repeat that the mining waste exclusion does not affect the regulatory status of control of emissions from burning in industrial furnaces, nor the storage which precedes burning.

Sincerely,

J. Winston Porter
Assistant Administrator

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